



General Assembly

January Session, 2009

Amendment

LCO No. 8497

SB0092008497SD0

Offered by:
SEN. PRAGUE, 19th Dist.

To: Subst. Senate Bill No. 920

File No. 251

Cal. No. 227

"AN ACT CLARIFYING PENSION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 31-53 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2009*):

5 (a) Each contract for the construction, remodeling, refinishing,
6 refurbishing, rehabilitation, alteration or repair of any public works
7 project by the state or any of its agents, or by any political subdivision
8 of the state or any of its agents, shall contain the following provision:
9 "The wages paid on an hourly basis to any person performing the
10 work of any mechanic, laborer or worker on the work herein
11 contracted to be done and the amount of payment or contribution paid
12 or payable on behalf of each such person to any employee welfare
13 fund, as defined in subsection [(h)] (j) of this section, shall be at a rate
14 equal to the rate customary or prevailing for the same work in the
15 same trade or occupation in the town in which such public works

16 project is being constructed. Any contractor who is not obligated by
17 agreement to make payment or contribution on behalf of such persons
18 to any such employee welfare fund shall pay to each mechanic, laborer
19 or worker as part of such person's wages the amount of payment or
20 contribution for such person's classification on each pay day."

21 (b) Any contractor or subcontractor who knowingly or wilfully
22 employs any mechanic, laborer or worker in the construction,
23 remodeling, refinishing, refurbishing, rehabilitation, alteration or
24 repair of any public works project for or on behalf of the state or any of
25 its agents, or any political subdivision of the state or any of its agents,
26 at a rate of wage on an hourly basis that is less than the rate customary
27 or prevailing for the same work in the same trade or occupation in the
28 town in which such public works project is being constructed,
29 remodeled, refinished, refurbished, rehabilitated, altered or repaired,
30 or who fails to pay the amount of payment or contributions paid or
31 payable on behalf of each such person to any employee welfare fund,
32 or in lieu thereof to the person, as provided by subsection (a) of this
33 section, shall be fined not less than two thousand five hundred dollars
34 but not more than five thousand dollars for each offense and (1) for the
35 first violation, shall be disqualified from bidding on contracts with the
36 state or any political subdivision until the contractor or subcontractor
37 has made full restitution of the back wages owed to such persons and
38 for an additional six months thereafter, and (2) for subsequent
39 violations, shall be disqualified from bidding on contracts with the
40 state or any political subdivision until the contractor or subcontractor
41 has made full restitution of the back wages owed to such persons and
42 for not less than an additional two years thereafter. In addition, if it is
43 found by the contracting officer representing the state or political
44 subdivision of the state that any mechanic, laborer or worker
45 employed by the contractor or any subcontractor directly on the site
46 for the work covered by the contract has been or is being paid a rate of
47 wages less than the rate of wages required by the contract to be paid as
48 required by this section, the state or contracting political subdivision of
49 the state may (A) by written notice to the contractor, terminate such

50 contractor's right to proceed with the work or such part of the work as
51 to which there has been a failure to pay said required wages and to
52 prosecute the work to completion by contract or otherwise, and the
53 contractor and the contractor's sureties shall be liable to the state or the
54 contracting political subdivision for any excess costs occasioned the
55 state or the contracting political subdivision thereby, or (B) withhold
56 payment of money to the contractor or subcontractor. The contracting
57 department of the state or the political subdivision of the state shall,
58 not later than two days after taking such action, notify the Labor
59 Commissioner, in writing, of the name of the contractor or
60 subcontractor, the project involved, the location of the work, the
61 violations involved, the date the contract was terminated, and steps
62 taken to collect the required wages.

63 (c) The Labor Commissioner may make complaint to the proper
64 prosecuting authorities for the violation of any provision of subsection
65 (b) of this section.

66 (d) For the purpose of predetermining the prevailing rate of wage
67 on an hourly basis and the amount of payment or contributions paid or
68 payable on behalf of each person to any employee welfare fund, as
69 defined in subsection [(h)] (j) of this section, in each town where such
70 contract is to be performed, the Labor Commissioner shall (1) hold a
71 hearing at any required time to determine the prevailing rate of wages
72 on an hourly basis and the amount of payment or contributions paid or
73 payable on behalf of each person to any employee welfare fund, as
74 defined in subsection [(h)] (j) of this section, upon any public work
75 within any specified area, and shall establish classifications of skilled,
76 semiskilled and ordinary labor, or (2) adopt and use such appropriate
77 and applicable prevailing wage rate determinations as have been made
78 by the Secretary of Labor of the United States under the provisions of
79 the Davis-Bacon Act, as amended.

80 (e) The Labor Commissioner shall determine the prevailing rate of
81 wages on an hourly basis and the amount of payment or contributions
82 paid or payable on behalf of such person to any employee welfare

83 fund, as defined in subsection [(h)] (j) of this section, in each locality
84 where any such public work is to be constructed, and the agent
85 empowered to let such contract shall contact the Labor Commissioner,
86 at least ten but not more than twenty days prior to the date such
87 contracts will be advertised for bid, to ascertain the proper rate of
88 wages and amount of employee welfare fund payments or
89 contributions and shall include such rate of wage on an hourly basis
90 and the amount of payment or contributions paid or payable on behalf
91 of each person to any employee welfare fund, as defined in subsection
92 [(h)] (j) of this section, or in lieu thereof the amount to be paid directly
93 to each person for such payment or contributions as provided in
94 subsection (a) of this section for all classifications of labor in the
95 proposal for the contract. The rate of wage on an hourly basis and the
96 amount of payment or contributions to any employee welfare fund, as
97 defined in subsection [(h)] (j) of this section, or cash in lieu thereof, as
98 provided in subsection (a) of this section, shall, at all times, be
99 considered as the minimum rate for the classification for which it was
100 established. Prior to the award of any contract subject to the provisions
101 of this section, such agent shall certify in writing to the Labor
102 Commissioner the total dollar amount of work to be done in
103 connection with such public works project, regardless of whether such
104 project consists of one or more contracts. Upon the award of any
105 contract subject to the provisions of this section, the contractor to
106 whom such contract is awarded shall certify, under oath, to the Labor
107 Commissioner the pay scale to be used by such contractor and any of
108 the contractor's subcontractors for work to be performed under such
109 contract.

110 (f) Each employer subject to the provisions of this section or section
111 31-54 shall (1) keep, maintain and preserve such records relating to the
112 wages and hours worked by each person performing the work of any
113 mechanic, laborer and worker and a schedule of the occupation or
114 work classification at which each person performing the work of any
115 mechanic, laborer or worker on the project is employed during each
116 work day and week in such manner and form as the Labor

117 Commissioner establishes to assure the proper payments due to such
118 persons or employee welfare funds under this section or section 31-54,
119 regardless of any contractual relationship alleged to exist between the
120 contractor and such person, and (2) submit monthly to the contracting
121 agency a certified payroll that shall consist of a complete copy of such
122 records accompanied by a statement signed by the employer that
123 indicates (A) such records are correct; (B) the rate of wages paid to
124 each person performing the work of any mechanic, laborer or worker
125 and the amount of payment or contributions paid or payable on behalf
126 of each such person to any employee welfare fund, as defined in
127 subsection [(h)] (j) of this section, are not less than the prevailing rate
128 of wages and the amount of payment or contributions paid or payable
129 on behalf of each such person to any employee welfare fund, as
130 determined by the Labor Commissioner pursuant to subsection (d) of
131 this section, and not less than those required by the contract to be paid;
132 (C) the employer has complied with the provisions of this section and
133 section 31-54; (D) each such person is covered by a workers'
134 compensation insurance policy for the duration of such person's
135 employment, which shall be demonstrated by submitting to the
136 contracting agency the name of the workers' compensation insurance
137 carrier covering each such person, the effective and expiration dates of
138 each policy and each policy number; (E) the employer does not receive
139 kickbacks, as defined in 41 USC 52, from any employee or employee
140 welfare fund; and (F) pursuant to the provisions of section 53a-157a,
141 the employer is aware that filing a certified payroll which the
142 employer knows to be false is a class D felony for which the employer
143 may be fined up to five thousand dollars, imprisoned for up to five
144 years, or both. This subsection shall not be construed to prohibit a
145 general contractor from relying on the certification of a lower tier
146 subcontractor, provided the general contractor shall not be exempted
147 from the provisions of section 53a-157a if the general contractor
148 knowingly relies upon a subcontractor's false certification.
149 Notwithstanding the provisions of section 1-210, the certified payroll
150 shall be considered a public record and every person shall have the
151 right to inspect and copy such records in accordance with the

152 provisions of section 1-212. The provisions of subsections (a) and (b) of
153 section 31-59 and sections 31-66 and 31-69 that are not inconsistent
154 with the provisions of this section or section 31-54 apply to this section.
155 Failing to file a certified payroll pursuant to subdivision (2) of this
156 subsection is a class D felony for which the employer may be fined up
157 to five thousand dollars, imprisoned for up to five years, or both.

158 (g) (1) A general contractor may, in good faith, rely on the
159 certification of a subcontractor as an affirmative defense to an action
160 brought by the Labor Commissioner to collect unpaid benefits on
161 behalf of an employee of such subcontractor if the general contractor
162 requires the subcontractor to provide (A) a payment bond on the
163 public works project, or (B) sufficient verification from the pension and
164 benefit fund administrator of the relevant fund that the amount of
165 payment or contributions required to be paid on behalf of each such
166 employee to any employee welfare fund, as defined in subsection (i) of
167 this section, has been paid.

168 (2) A subcontractor may, in good faith, rely on the certification of a
169 lower tier subcontractor as an affirmative defense to an action brought
170 by the Labor Commissioner to collect unpaid benefits on behalf of an
171 employee of such lower tier subcontractor if the subcontractor requires
172 the lower tier subcontractor to provide (A) a payment bond on the
173 public works project, or (B) sufficient verification from the pension and
174 benefit fund administrator of the relevant fund that the amount of
175 payment or contributions required to be paid on behalf of each such
176 employee to any employee welfare fund, as defined in subsection (i) of
177 this section, has been paid.

178 (h) Any contractor who is required by the Labor Department to
179 make any payment as a result of a subcontractor's failure to pay wages
180 or benefits, or any subcontractor who is required by the Labor
181 Department to make any payment as a result of a lower tier
182 subcontractor's failure to pay wages or benefits, may bring a civil
183 action in the Superior Court to recover the actual damages sustained
184 by reason of making such payment, together with costs and a

185 reasonable attorney's fee.

186 [(g)] (i) The provisions of this section do not apply where the total
187 cost of all work to be performed by all contractors and subcontractors
188 in connection with new construction of any public works project is less
189 than four hundred thousand dollars or where the total cost of all work
190 to be performed by all contractors and subcontractors in connection
191 with any remodeling, refinishing, refurbishing, rehabilitation,
192 alteration or repair of any public works project is less than one
193 hundred thousand dollars.

194 [(h)] (j) As used in this section, section 31-54 and section 31-89a, as
195 amended by this act, "employee welfare fund" means any trust fund
196 established by one or more employers and one or more labor
197 organizations or one or more other third parties not affiliated with the
198 employers to provide from moneys in the fund, whether through the
199 purchase of insurance or annuity contracts or otherwise, benefits
200 under an employee welfare plan; provided such term shall not include
201 any such fund where the trustee, or all of the trustees, are subject to
202 supervision by the Banking Commissioner of this state or any other
203 state or the Comptroller of the Currency of the United States or the
204 Board of Governors of the Federal Reserve System, and "benefits under
205 an employee welfare plan" means one or more benefits or services
206 under any plan established or maintained for persons performing the
207 work of any mechanics, laborers or workers or their families or
208 dependents, or for both, including, but not limited to, medical, surgical
209 or hospital care benefits; benefits in the event of sickness, accident,
210 disability or death; benefits in the event of unemployment, or
211 retirement benefits.

212 Sec. 2. Subsection (a) of section 31-53b of the general statutes is
213 repealed and the following is substituted in lieu thereof (*Effective*
214 *October 1, 2009*):

215 (a) Each contract for a public works project entered into on or after
216 July 1, 2009, by the state or any of its agents, or by any political

217 subdivision of the state or any of its agents, described in subsection
218 [(g)] (i) of section 31-53, as amended by this act, shall contain a
219 provision requiring that each contractor furnish proof with the weekly
220 certified payroll form for the first week each employee begins work on
221 such project that any person performing the work of a mechanic,
222 laborer or worker pursuant to the classifications of labor under section
223 31-53, as amended by this act, on such public works project, pursuant
224 to such contract, has completed a course of at least ten hours in
225 duration in construction safety and health approved by the federal
226 Occupational Safety and Health Administration or, has completed a
227 new miner training program approved by the Federal Mine Safety and
228 Health Administration in accordance with 30 CFR 48 or, in the case of
229 telecommunications employees, has completed at least ten hours of
230 training in accordance with 29 CFR 1910.268.

231 Sec. 3. Subsection (a) of section 31-89a of the general statutes is
232 repealed and the following is substituted in lieu thereof (*Effective*
233 *October 1, 2009*):

234 (a) Payments to employee welfare funds, as defined in subsection
235 [(h)] (j) of section 31-53, as amended by this act, which are past due
236 under the terms of a written contract or rules and regulations adopted
237 by the trustees of such funds shall be considered as wages for the
238 purpose of section 31-72.

239 Sec. 4. (NEW) (*Effective October 1, 2009*) Any contractor required by
240 the Labor Department to make a payment pursuant to subsection (h)
241 of section 31-53 of the general statutes, as amended by this act, may
242 bring a civil action, in accordance with 31-72 of the general statutes, in
243 the superior court for the judicial district where the failure to pay
244 wages occurred. No contractor or subcontractor bringing a civil action
245 may recover more than any payment required by the Labor
246 Department, except the court may, in its discretion, award costs and a
247 reasonable attorney's fee."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	31-53
Sec. 2	<i>October 1, 2009</i>	31-53b(a)
Sec. 3	<i>October 1, 2009</i>	31-89a(a)
Sec. 4	<i>October 1, 2009</i>	New section